IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 93 of 1985

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEMAN ISMAIL HUSAIN (DELETED)

Versus

STATE OF GUJARAT

Appearance:

MS SEJAL K MANDAVIA for petitioners

MR ST MEHTA, Ld. APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 06/09/2000

ORAL JUDGEMENT

This revision application under Section 397 read with 401 CrPC has been preferred by the accused nos.3 and 4 in Criminal Case No.19/1984. In Criminal Case No.19/1984, four persons were tried for offences punishable under Sections 447, 352, 504, 506(2) and 114 IPC. The offence punishable under Section 504 IPC was not proved against the accused and the accused were acquitted of the charge under Section 504. However, they were found guilty of the commission of offences punishable under Sections 447, 352, 506(2) read with Section 114 IPC. The accused no.4 Taraben Alibhai was ordered to be released on probation of good conduct for a

period of one year. The accused No.1, Meman Ismail Husain; the accused No.2, Vora Shabir Husain Alibhai and the accused No.3, Luhana Shaileshkumar Laxmidas were convicted for offence punishable under Section 447. The accused No.1, Meman Ismail Husain, the accused No.2 Vora Shabir Husain Alibhai and accused No.3, Luhana Shaileshkumar Laxmidas were sentenced with 15 days' simple imprisonment and a fine of Rs.100/each, or in default of payment, simple imprisonment for 10 days. For the offence punishable under Section 352 IPC, the said accused were sentenced with simple imprisonment for 25 days and a fine of Rs.100/- each and a further simple imprisonment for 10 days in default of payment. For the offence punishable under Section 506(2) IPC, the said accused were sentenced for six months rigorous imprisonment and a fine of Rs.300/- each, or in default of payment of fine, simple imprisonment for two months. Feeling aggrieved, the accused preferred Criminal Appeal No.75/1984 before the Sessions Court, Junagadh. The Learned Additional Sessions Judge, Junagadh, by his judgement and order dated 1st February, 1985, partially allowed the appeal. Though the conviction of the accused was confirmed, the accused No.3, Luhana Shaileshkumar Laxmidas was ordered to be released on probation after calling for the report from the probation officer. The punishment imposed upon the accused No.1, Meman Ismail Husain was reduced to simple imprisonment for one day till rising of the Court for the offences punishable under Sections 447 and 352 read with section 114 IPC. For the offence punishable under Section 506(2) read with Section 114 IPC, the said two accused were sentenced with 15 days' rigorous imprisonment. Feeling aggrieved, the accused Nos.1, 2, and 4 have preferred the present revision. Pending this revision, the accused No.1 Meman Ismail Husain has died on 19-8-88 and accordingly his name has been deleted from the cause title by order dated 30th January, 1995.

Ms. S.K. Mandavia has submitted that both the Courts below have grossly erred in recording the conviction against accused persons. She has submitted that no independent witness was examined by the prosecution and two independent witnesses examined by the prosecution were chance witnesses and ought not to have been believed by the Courts below. Though it was alleged that the accused Nos.1, 2 and 3 were armed with weapons like lathi and iron pipe, no weapon has been recovered from either of them. The evidence of the prosecution witnesses is self-contradictory and conviction could not have been based on such evidence.

I am afraid, the reappreciation of evidence is beyond the scope of revision under Section 397 read with Section 401 CrPC. Besides, it is not possible to hold that the findings recorded by the Courts below are perverse, which has resulted into miscarriage of justice. No case has been made out, which should warrant interference by this Court in exercise of its revisional jurisdiction. Revision Application is accordingly dismissed. Rule is discharged.

6-9-2000 (Ms. R.M. Doshit, J.)

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